

for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ~ Dean Trebesch, Maricopa County Public Defender

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"Charting" A New Course: Arguing Reasonable Doubt Without Seeming Unreasonable

by Jim Haas


Debate rages regarding whether defense attorneys should argue reasonable doubt in closing arguments. Many attorneys never do, because they do not want to dilute their argument that their client is innocent. Others almost always argue reasonable doubt, believing that this gives their client the best chance at acquittal. Like

everything else in this business, there is no right or wrong answer: what works in this week's trial will probably fail miserably next week. My personal opinion is that you can have it both ways: argue as passionately as you like that your client is innocent, but ultimately remind the jury that this is not the decision they must make; whether there is reasonable doubt is the only question.

It is a fine line to walk, but it can be done in most cases. I have found it helpful in several cases to base my closing argument on a chart which allows me to argue both innocence and reasonable doubt. I do not use the reasonable doubt chart that is commonly used by attorneys in this office, for several reasons: first, I think it is dangerous to rely on something "canned" in a closing argument; and second, the effect of the chart can be easily neutralized by the prosecutor (in ways that I will not specify, because, hey, some of them read this newsletter, you know); and third, that thing is getting dog-eared!

The chart I use is tailored to the facts of the case. It lists the three conclusions that I argue are suggested by the evidence. Number one contains the elements that the state must prove to establish guilt, set forth in "people" language and not legalese. Number two is left blank until the end of the argument. Number three sets forth the theory of the defense. As an example, here is the chart I used in a case in which my client, a self-employed auto painter, was accused of keeping a car that had been given to him by a used car dealer to paint (the names have been changed to protect the guilty):

1. Ruben stole the car from XYZ Used Cars.
- 2.
3. XYZ Used Cars scammed Ruben.

(cont. on pg. 2) 

In this case, I spent the whole trial trying to show the jury that the used car dealer had reported the car stolen so that he would not have to pay Ruben for the expensive paint job that he had done on it. As in every trial, there was some evidence to support this theory, and some which clearly did not. In closing, after presenting the chart to the jury, I proceeded to talk about the evidence as it pertained to each possibility on the chart. I argued that the evidence did not support number one, as the jury, no doubt, expected me to do. I then argued how the evidence did support number three, again as expected. But then I talked frankly to the jury about the evidence that did not support number three, and acknowledged that it might be reasonable to conclude that number three was not the answer. The jury did not expect this, and they seemed confused (and very attentive).

The idea is to bring the jury to the conclusion that neither number one nor number three holds the true answer. Those are the extremes, and, like every other dispute they have had to deal with in their lives, the truth is not in the extremes. The truth is in the middle somewhere. The truth must therefore lie in number two on the chart, which has not yet been identified.

At this point, I fill in number two with its several possibilities: "Mistake, misunderstanding, comedy of errors, who knows? . . . " This gives the jury the opportunity to insert their own theory of what happened,

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or to acknowledge that they just cannot tell. Number two encompasses every possibility that lies between the two extremes, numbers one and three.

The next step is to tell the jury, now hopelessly confused about what they should do, that number two belongs to the defense; that the state's burden is to prove number one beyond a reasonable doubt; and that if the state has not satisfied each and every one of them, beyond a reasonable doubt, that number one is the truth, their verdict must be not guilty. If you wish, you can now draw a line under number one to indicate that everything below the line is not guilty (like that other chart).

This method takes advantage of the human tendency to move toward the middle when faced with contrary choices. It empowers the jury to formulate their own theory of what happened, and to argue it in deliberations. It allows you to acknowledge that there is evidence that does not support your theory, which bolsters your

credibility to the jury. It makes the prosecutor take the extreme position, while you take the comfortable middle of the road.

Like every other trial technique, this method will not work in all cases. It works best where the possibilities suggested by the evidence are diametrically opposed to one another, e.g. "Bob shot at Ted; Ted shot at Bob". It will not work, obviously, if you cannot at least identify a middle ground between the stories being told by the witnesses. But it is a helpful structure in appropriate cases which allows us to reclaim the middle ground and argue reasonable doubt without sounding unreasonable.

P.S. Ruben was acquitted — used car dealers make lousy victims. Ω

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*Dedicated to the relentless
pursuit of protecting your
legal rights amidst the
unending maelstrom of
injustice.*

Police In The Line Of Duty As Crime Victims?

by Christopher Johns

"There's something happening here and what it is ain't exactly clear. There's a man with a gun over there telling me I got to beware."

That's how the old Buffalo Springfield song from 1967 goes. And while thinking about the summer of '67 still makes me shudder, the words also appropriately describe the current dilemma with victims' rights and police officers in Arizona.

First they were maybe victims. Then they weren't (for purposes of interviews) and now they are considered crime victims for all purposes including interviews if they claim to be a "victim".

What's happening here? Whatever it is sure isn't clear. How can an agent of the state be a victim—especially if he or she possesses exculpatory information? And as victims, since police officers are also entitled to restitution, isn't there a danger that some officers will become "professional victims"? In other words, is their financial incentive relevant? Moreover, how can it be that an officer who prepares a report is now not subject to an interview? What public policy interests are being served by protecting what are, in effect, "professional witnesses"?

Those are just a few of the issues and questions raised by considering police officers as victims. How did we get here and what can we do about it? Here's a quick refresher to get you on the same page.

Teach Your Children Well

Back in '89, the Arizona Supreme Court promulgated a criminal procedure rule granting alleged crime victims certain rights (Rule 39, Ariz. R. Crim. P.). Most of the "rights" entitled crime victims to notice of all criminal "proceedings" and to treatment as human beings rather than pieces of evidence. In effect, the Rule was the first step in elevating "victims" to the status of "quasi-parties" in a criminal case.

At the time, no one seemed to contemplate that police officers were victims. Makes sense.

The supreme court rules didn't go far enough for some, so in 1990, Arizona voters adopted a constitutional amendment called the "Victims' Bill of Rights." Basically, it provides for 12 rights with which most criminal law practitioners are now pretty familiar.

The constitutional amendment, however, was fairly broad and not exactly devoid of its own quirks.

For example, victims in custody (which many are) don't get the same rights as someone out-of-custody. A strange distinction since many crime victims are also poor and often minorities.

House Bill 2414 created the "Victims' Rights Implementation Act" effective January 1, 1992. In a nutshell the Act defined and created implementation legislation for victims' rights. Specifically, A.R.S. 13-4433 was enacted to create procedures for victim interviews. All of this was possible because the constitutional amendment grants the legislature authority to "enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section"


The following legislative session, the Maricopa County Public Defender's Office was involved in a heavy lobbying effort to amend certain provisions of A.R.S. 13-4433. In particular, the provision requiring prosecutors to "promptly" notify defense lawyers of their requests for victim interviews had proved unworkable and the term itself appears constitutionally vague. Additionally, the section specifying procedures for victim interviews had no provisions for the numerous victims who contact the public defender's office directly. An amendment inserted

the phrase "initiates contact" into A.R.S. 13-4433(B) to make it clear that if victims contact defense lawyers there is no improper conduct by talking with them.

Lastly, sub-section F was added to A.R.S. 13-4433. It provided that for purposes of pretrial interviews police officers were exempt from being able to refuse such an interview on the grounds of victims' rights. This amendment was the result of

police officers themselves, serving on Senator Patti Noland's (then chair of the House Judiciary Committee) "Ad Hoc Committee on Victim's Rights," agreeing that the same policy considerations applicable to lay witnesses (victims) didn't apply to police officers. After all, not only are law enforcement officers trained at the academy to "testify," many have considerably more experience than the lawyers with whom they routinely deal.

The amendment, however, was immediately attacked in a series of cases by the Maricopa County Attorney's Office. At least one, and perhaps more, special action followed where the state claimed that A.R.S. 13-4433(F) was unconstitutional by narrowing the right(s) granted under the Victims' Bill of Rights (*See, e.g., State v. Beltran*, 94-251 filed in Division One on October 22, 1992.)

(cont. on pg. 4) 

And as victims, since police officers are also entitled to restitution, isn't there a danger that some officers will become "professional victims"?

Jurisdiction was never conferred; however, the next legislative session, section 4433(F) was repealed as part of the comprehensive revisions to the criminal code.

The "kicker" is also the May 1994 Arizona Court of Appeals Division One decision in *State v. Roscoe*, 166 Ariz. Adv. Rep. 12 (1994) which says that the effect of A.R.S. 13-4433(F) was to "abrogate a peace officer-victim's constitutional right to refuse an interview, deposition or other discovery request as provided by the Arizona Constitution." Get a grip!

Other Arguments:

Nowadays Clancy Can't Even Sing

"What a field day for the heat. There's a thousand people in the street." Now we're back where we started. Neither the constitution, criminal rules nor implementation act "officially" classify law enforcement officers as victims--but that's how they're being treated.

Cogent arguments exist, however, for why they shouldn't be given the same consideration as crime victims while they are acting in their official duties as agents of the government. Plain and simple, criminal defense practitioners may want to consider vigorously fighting the designation of police officers as victims both before, during, and after a trial. 'Cause it ain't fair. Maybe the issue should go to the "Arizona Supremes" and then even to the supreme "Supremes."

Forty-Nine Reasons

This is about more than yanking cops' chains. It goes to fundamental fairness. Peace officers are not ordinary citizens. They are trained professionals specifically schooled in writing reports relied on by prosecutors. They are taught how to preserve evidence, to interview witnesses, submit to interviews, and to testify before judges and juries.

Unlike ordinary citizens, police officers voluntarily place themselves in harm's way. Unlike citizen, complaining witnesses (what alleged victims really are!), peace officers are "parties" to a criminal case as agents of the state. To allow peace officers to refuse defense interviews stands victims' rights on its head.

Big Brother & The Holding Company

How can police officers not be agents of the state? If they are, how can they also be victims? Police officers are "public officers." See *Russell v. Glasgow*, 63 Ariz. 310, 162 P.2d 129 (1945). Their principle duty is the preservation of public peace. And, a police officer's knowledge has been deemed to be that of the prosecutor. See *Imbler v. Craven*, 258 F.Supp. 795 (1969). Moreover, Rule 15.1(d), of the Criminal Procedure Rules specifically provides that "[t]he prosecutor's obligation . . . extends to material and information in the possession

or control of members of his staff and any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control."

Okay. If that doesn't work, try something a little more esoteric. A victim is a person, right? Well, peace officers are specifically defined by Arizona law. See A.R.S. 1-215(23). Now see the definition for "person" under Arizona law, A.R.S. 1-215(24).

Obviously, peace officers are persons (some clients may disagree). But the law does treat and define them differently.

An example of how this works is civil rights law. Neither the state nor its officials acting in their official capacity are "persons" under sec. 42 USCA 1983. See, e.g., *Will v. Michigan Dept. of State Police*, 109 S.Ct. 2304 (1989) (holding that the Michigan State Police Department and its directors are not persons under federal civil rights statutes).

All right, if that doesn't do it, what about plain common sense? Police officers accept certain risks. They are expected to serve the public, including those accused of crimes. Normally, police officers inject themselves into situations.

The Edward Mallet case is an excellent example. Had Mallet not died by the hands of Phoenix Police Department Officers, he would no doubt have been charged with assault and resisting arrest (and perhaps more). All of the officers involved would be victims. None could be interviewed.

Strangely, now that Mallet is dead, if his family sues the Phoenix Police Department, each and every officer would have to submit to a deposition under oath.

Rights may be waived. Peace officers waive their rights as victims to act as case and government agents.

Victims cannot experience justice unless the accused also is afforded justice. Ω

The common man gets justice as easily as grasping smoke.

S.D. O'Connor

A jury is twelve persons chosen to decide who has the better lawyer.

R. Frost

The more laws, the more criminals.

O.W. Holmes

The laws I love, the lawyers I suspect.

W. Churchill

I'm sober as a judge.

W.C. Fields

DID YOU KNOW....

(RE: Juvenile Rule Changes)

By Helene Abrams

As a result of amendments to Rules 12, 13, and 14, Rules of Procedure for Juvenile Court, (R.P.J.C.), adopted by the Arizona Supreme Court, the juvenile court implemented new procedures for transfer hearings.

So... (you say) I only represent adults. These changes do not affect my clients.

WRONG WRONG WRONG (I say)

Many of the changes affect you and your clients. The highlights follow...

Juveniles transferred to adult court for prosecution, are not entitled to a preliminary hearing in adult court. Rule 14 (b), R.P.J.C. (Query -- is the Arizona constitutional requirement in Art. 2 §30 met by this change?) The probable cause portion of the transfer hearing "shall constitute compliance with the defendant's right to a preliminary hearing under Rule 5 of the Rules of Criminal Procedure."

The adult procedural requirements to initiate a criminal action are accomplished by the filing of a criminal complaint at the same time the state files a Motion to Transfer the juvenile to adult court. Rule 12 (a), R.P.J.C. The complaint is sworn to by the prosecutor, and the judicial officer makes a probable cause determination by reviewing the police reports or by hearing testimony.

The complaint may be amended before the transfer decision is made to conform to the evidence, BUT THE JUVENILE SHALL NOT BE TRANSFERRED OR HELD TO ANSWER FOR AN OFFENSE DIFFERENT FROM THAT FOR WHICH PROBABLE CAUSE WAS FOUND AT THE TRANSFER HEARING. Rule 12 (a) R.P.J.C. What this means is the state may not increase the severity of the charge, change the charge or add additional counts after the juvenile court decides on which charges it finds probable cause, unless the juvenile consents. Rule 14 (d) R.P.J.C.

The minute entry from the juvenile court will designate the counts upon which the juvenile will be tried in adult court. Rule 14 (d) R.P.J.C.

The probable cause hearing is recorded by a court reporter. The transcript of the probable cause phase shall be filed with the Clerk of the Superior Court no later

than 20 days after the completion of the hearing. The internal procedure is, if the juvenile is transferred, the clerk in the juvenile court sends the transcript to the clerk in the adult court. It can be retrieved just like any other transcript of a preliminary hearing or grand jury proceeding.

It is extremely important that the transcript be reviewed for two reasons. First, the transcript may have testimony from an accusing witness (i.e. victim) because victims' rights do not (yet?) apply to juvenile court. It will contain the testimony of at least one witness who will have been cross-examined, and who may have provided some inconsistencies with which you can work.

Second, a motion for redetermination of probable cause may be filed if no credible evidence of guilt was adduced or if the defendant was denied a substantial procedural right. See Rule 5.5 (a), Rules of Criminal Procedure. We are not sure who will decide this motion because the superior court (adult) may not be permitted to sit as an appellate court in deciding if the superior court (juvenile) heard adequate evidence to find probable cause. Someone needs to test the water here and let us know what happens.

Just a couple of other things you might be curious about. At some point during the hearing, the juvenile court will perform the functions set forth in Rule 4.2 (a), Rules of Criminal Procedure. This is basically the

initial appearance. Juveniles DO NOT receive an initial appearance when they get transferred. The juvenile court judge will enter an order regarding release, bail, etc. The child will be transported to the adult facility within 24 - 48 hours. The child's next appearance will be the arraignment which should be about ten (10) days after (s)he is transferred.

One other note, Rule 15.3 (a) (2), Rules of Criminal Procedure was also amended. If a person was a witness at a probable cause hearing in juvenile court, you will probably NOT be able to get a deposition ordered by the court. The rule says "WITNESS" and I read that as requiring the person to "TESTIFY" at the probable cause hearing. This makes sense because cross-examination would have been afforded. Do not be fooled by the state representative who tells you that you may not interview or depose a person simply because he or she showed up for the probable cause hearing. That is NOT what the rule says.

Hope this information assists you in representing the children we were unable to keep in the juvenile court. Q

Juveniles DO NOT receive an initial appearance when they get transferred.

...

Juveniles transferred to adult court for prosecution, are not entitled to a preliminary hearing in adult court.

Nobody Said Being A Public Defender Would Be Easy

(Formerly "Practice Pointers")

With Newt's contract on America and Maricopa County's financial woes, public defending isn't getting any easier. Perhaps some odds and ends, a couple faux pas and some ersatz justice will bring some cheer. What follows is an eclectic look at this and that going on in the criminal justice system--mostly for the interest of aficionados of "and justice for all." Here goes:

The Committee Speaks: Tongues or Sense?

If you're not inclined to buy an Anne Rice novel, bone up on *The Bell Curve* or read Barbara Bush's new autobiography, you may want to read "Jurors: The Power of 12." No, that's not one of two currently popular nonfiction books at Borders. It's the finished report from the Committee On More Effective Use of Juries, chaired by Maricopa County Superior Court Judge B. Michael Dann (Mara Siegel from our office also was a committee member).

The committee formed by the Arizona Supreme Court, whose report has garnered national attention (articles in the *New York Times* and *Wall Street Journal*), has created numerous recommendations for improving Arizona's jury system. Depending upon your perspective, many of the recommendations are excellent, some good, and a few have the potential, at least, to be detrimental to our clients. No doubt many of the recommendations will be controversial (if you are inclined, the comment period on the recommended rule-change portions of the report will run until the end of February).

Here's a summary of some of the more important provisions--with special emphasis on those that promote a more fair trial for our clients and those that could be problematic.

- * There are several proposals to improve the number of minority jurors. The most controversial will probably be "Random Stratified Selection." Basically, this would ensure that those available on any given day in the jury pool would be in proportion to the racial and ethnic mix of each county's population. Whether the jurors end up serving would still be done in the same way, but the pool would start out being more reflective of the community.

- * Another fair, jury cross-section proposal would give judges the power to *strike grossly unrepresentative jury panels*.

- * By way of improving jury selection, it's also proposed to allow *mini-opening statements*, and

voir dire would be guaranteed in criminal trials as it now is in civil cases. Peremptory challenges would be retained in their present form.

- * Trials could be limited by giving trial judges the express power to put reasonable time limits on a certain portion or overall trial length.

- * Jurors will be able to take notes in all cases and be empowered to ask questions during the trial. Additionally, jurors could deliberate before the end of the trial, as long as it was among themselves in the jury room. Jurors would also be allowed to ask questions about the instructions.

- * A number of proposals would provide services to jurors "stressed out" by the proceedings, including counseling if necessary.

- * Additionally, a *Jurors Bill of Rights* is proposed.

The Politics of Crime

It's time for another maddening or enlightening time from the pols at the legislature. Here's what's on the agenda:

- * The big issue will be extending "victims' rights" to the juvenile justice system. Remember, the constitutional amendment gave the legislature the power to do so. Until now, however, it had resisted the temptation. Not so any longer. Although the bill is still being revised, thanks to efforts by Ellen Katz, Helene Abrams, Barbara Cerepanya, the Children's Action Alliance and this writer, it may be a done deal. One big problem: many kids end up committing crimes against their own parents--who then are the victims. Traditionally, public defenders work closely with parents to devise plans for the child. Now juvenile public defenders wouldn't be able to talk to our client's parents! In other words, we couldn't effectively "do our job."

- * Here's what we need: a sexual predator law based on one enacted in the State of Washington. You know, where all kinds of extra precautions are taken to let you know about "predators." One problem in Arizona: sexual predators get so much time for offenses, they are rarely ever released from prison.

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* Community supervision is a problem. Remember when the "pols" did the criminal code reform? They created the concept of "community supervision." Many folks thought that the probation departments could do a better job than the DOC folks. The goal was to eventually shift this task to probation departments in coming years by increased funding. But some folks think DOC should do the job.

* Remember that stuff about electing judges? The legislature is going to tackle the issue.

* How about a capital representation office for the State of Arizona? Great idea, if properly funded and staffed with a top group of lawyers to upgrade the statewide representation of people the state wants to kill. This is an idea that has come before funding.

Immigration Issues

Bob McWhirter and Jon Sands of the Federal Public Defender's Office have published "Defending A Criminal Immigration Case" in the November issue of the *Criminal Practice Law Report*.

CJ

Q

October/November Jury Trials

September 12

Steve Avilla (with Candace Kent): Client charged with first degree murder. Investigator P. Kasieta. Trial before Judge Martin ended October 31. Defendant found not guilty. Prosecutor R. Shutts.

September 14

Ray Schumacher: Client charged with misdemeanor assault and aggravated assault. Trial before Judge Barker ended September 16 in a mistrial. Prosecutor G. McKay.

September 26

Rena Glitsos: Client charged with possession of drug paraphernalia and three counts of possession of narcotic drugs. Investigator M. Fusselman. Trial before Judge Rogers ended October 3. Defendant found guilty of possession of drug paraphernalia and one count of

possession of narcotic drugs; not guilty of two counts of possession of narcotic drugs. Prosecutor A. Garriott.

Elizabeth Langford: Client charged with two counts of fraud and one count of forgery. Investigator V. Dew. Trial before Judge Jarrett ended October 4. Defendant found guilty. Prosecutor N. Keyt.

Robert Ventrella: Client charged with aggravated assault. Trial before Judge DeLeon ended October 5. Defendant found guilty of attempted aggravated assault. Prosecutor C. Whitten.

September 27

Dan Carrion: Client charged with aggravated assault (dangerous). Investigator R. Barwick. Trial before Judge Colosi ended October 3. Defendant found guilty. Prosecutor T. Duax.

September 28

Kevin Burns: Client charged with failure to return rental property. Investigator J. Castro. Trial before Judge Kamin ended October 3. Defendant found guilty. Prosecutor P. Sullivan.

September 29

Karen Noble: Client charged with aggravated assault (dangerous and with priors). Investigator J. Castro. Trial before Judge O'Toole ended October 4. Defendant found guilty of aggravated assault (dangerous, without priors). Prosecutor Mason.

October 3

Terry Bublik: Client charged with manslaughter (dangerous, with vehicle). Investigator J. Castro. Trial before Judge Hauser ended October 17. Defendant found guilty of lesser included offense of negligent homicide (non-dangerous). Prosecutor M. Ainley.

James Cleary: Client charged with aggravated DUI. Trial before Judge Hertzberg ended October 6. Defendant found not guilty of aggravated DUI; guilty of lesser included driving on suspended license. Prosecutor Zora.

Valarie Shears: Client charged with resisting arrest (with priors). Trial before Judge Araneta ended October 6. Defendant found guilty. Prosecutor R. Mitchell.

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October 6

Thomas Timmer: Client charged with aggravated assault. Investigator N. Jones. Trial before Judge Gerst ended October 12. Defendant found guilty. Prosecutor Schroeder.

Steve Whelihan: Client charged with public sexual indecency. Investigator P. Kasieta. Trial before Judge Schwartz ended October 13. Defendant found guilty. Prosecutor Beaty.

October 11

Sylvina Cotto: Client charged with aggravated DUI. Trial before Judge Portley ended October 13. Defendant found guilty. Prosecutor A. Jennings.

Michael Hruby: Client charged with aggravated DUI (with priors). Investigator C. Yarbrough. Trial before Judge Ryan ended October 13 with a hung jury. Prosecutor Doran.

Darius Nickerson: Client charged with aggravated assault and kidnapping (both dangerous). Investigator M. Fusselman. Trial before Judge Dann ended October 11 with a judgment of acquittal. Prosecutor D. Patton.

Greg Parzych: Client charged with two counts of burglary. Trial before Judge Kaufman ended October 13. Defendant found guilty. Prosecutor B. Brown.

October 12

Elizabeth Langford: Client charged with two counts of aggravated assault. Trial before Judge Skelly ended October 18. Defendant found guilty. Prosecutor N. Miller.

Ray Schumacher: Client charged with sexual abuse (over the age of 15). Trial before Judge Sheldon ended October 13. Defendant found not guilty. Prosecutor V. Cook.

Jeanne Steiner: Client charged with possession of marijuana for sale and possession of drug paraphernalia. Trial before Judge O'Melia ended October 17. Defendant found guilty. Prosecutor Kennedy.

October 13

Colleen McNally: Client charged with child molestation and two counts of sexual abuse. Investigator J. Allard. Trial before Judge Gerst ended October 25 with a hung jury. Prosecutor V. Imbordino.

Roland Steinle: Client charged with aggravated DUI. Trial before Judge Barker ended October 18. Defendant found guilty. Prosecutor T. Puklin.

October 14

Brian Bond: Client charged with attempted second degree murder. Trial before Judge Hertzberg ended October 25. Defendant found guilty. Prosecutor Sherman.

October 17

Paul Ramos: Client charged with theft. Investigator T. Thomas. Trial before Judge Kaufman ended October 19. Defendant found not guilty. Prosecutor G. McKay.

October 18

Robert Billar: Client charged with possession of dangerous drugs and possession of drug paraphernalia. Trial before Judge Jarrett ended October 19 in a mistrial. Prosecutor A. Garriott.

Nancy Johnson: Client charged with possession of marijuana and two counts of misconduct involving weapons. Trial before Judge Ryan ended October 18. Defendant found guilty. Prosecutor C. Whitten.


Vicki Lopez: Client charged with aggravated assault. Investigator B. Abernethy. Trial before Judge Topf ended October 24. Defendant found guilty. Prosecutor L. Kane.

Valarie Shears: Client charged with leaving the scene of an injury accident. Investigator D. Erb. Trial before Judge Schwartz ended October 27. Defendant found guilty. Prosecutor T. Doran.

Louise Stark: Client charged with armed robbery, kidnapping, possession of drug paraphernalia, and misconduct involving weapons. Investigator W. Woodriffe. Trial before Judge Brown ended October 26. Defendant found guilty of weapons charge (with priors); hung jury on armed robbery, kidnapping and possession of drug paraphernalia. Prosecutor Puchek.

October 19

Doug Harmon: Client charged with six counts of armed robbery (dangerous). Investigator M. Breen. Trial before Judge Barker ended October 31. Defendant found guilty. Prosecutor J. Hicks.

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Dan Sheperd: Client charged with aggravated assault. Investigator P. Kasieta. Bench trial before Judge Myers ended October 19. Defendant found **not guilty**. Prosecutor Richards.

Leonard Whitfield: Client charged with aggravated assault (dangerous). Investigator M. Breen. Trial before Judge Jarrett ended November 7. Defendant found **not guilty**. Prosecutor L. Peters.

October 20

Robert Ventrella: Client charged with aggravated assault. Investigator H. Jackson. Trial before Judge Colosi ended October 28. Defendant found guilty of disorderly conduct (lesser included offense). Prosecutor V. Harris.

October 24

Larry Blieden: Client charged with misconduct involving weapons. Investigator J. Allard. Trial before Judge Ryan ended October 25. Defendant found guilty. Prosecutor Richards.

Shelley Davis: Client charged with possession of dangerous drugs for sale, possession of drug paraphernalia and misconduct involving weapons. Bench trial (submitted on DR's) before Judge Schafer ended October 28. Defendant found guilty. Prosecutor Hinchcliffe.

Andy DeFusco: Client charged with harassment. Trial before Judge Skelly ended October 26. Defendant found guilty. Prosecutor M. Vincent.

Robert Ellig: Client charged with aggravated DUI (with priors). Trial before Judge Mangum ended October 28. Defendant found guilty. Prosecutor Bartlett.

October 25

Rebecca Potter: Client charged with aggravated DUI. Investigator P. Kasieta. Trial before Judge Schwartz ended October 26. Defendant found **not guilty**. Prosecutor P. Hearn.

October 26

James Cleary: Client charged with aggravated assault (dangerous). Trial before Judge Hertzberg ended October 31. Defendant found guilty of aggravated assault, non-dangerous. Prosecutor Brnovich.

Carol Larsen-Harper: Client charged with attempted child molestation. Investigator D. Erb. Bench

trial before Judge Bolton ended October 28. Defendant found guilty. Prosecutor S. Novitsky.

October 27

Donna Elm: Client charged with one count of aggravated assault (dangerous) and one count of aggravated assault (dangerous crimes against children). Investigator P. Kasieta. Trial before Judge Topf ended November 3. Defendant found **not guilty**. Prosecutor Cunanan.

October 28

Robert Ventrella: Client charged with aggravated DUI. Trial before Judge Silverman ended November 3 with a **judgment of acquittal**. Defendant found guilty of misdemeanor DUI. Prosecutor J. Beene.

October 31

Terry Bublik: Client charged with aggravated assault (dangerous). Investigator J. Castro. Trial before Judge Colosi ended November 7. Defendant found guilty. Prosecutor Kane.

Larry Grant: Client charged with aggravated assault (dangerous). Trial before Judge D'Angelo ended November 4. Defendant found guilty of misdemeanor assault. Prosecutor P. Howe.

Gary Hochsprung: Client charged with aggravated robbery (dangerous). Investigator N. Jones. Trial before Judge DeLeon ended November 2. Defendant found **not guilty**. Prosecutor Wendell.


Joseph Stazzone: Client charged with aggravated assault. Trial before Judge Bolton ended on November 7. Defendant found **not guilty** of aggravated assault; guilty of lesser included disorderly conduct. Prosecutor T. Duax.

November 1

Peg Green: Client charged with possession of marijuana (with prior). Trial before Judge Dougherty ended November 2. Defendant found guilty. Prosecutor Hinchcliffe.

November 3

Roland Steinle: Client charged with aggravated DUI. Investigator D. Moller. Trial before Judge Barker ended on November 4. Defendant found **not guilty** of aggravated DUI; guilty on suspended license. Prosecutor A. Jennings.

(cont. on pg. 10) 

Rickey Watson: Client charged with eight counts of armed robbery. Investigator D. Moller. Trial before Judge Portley ended November 14 in a mistrial. Prosecutor R. Campos.

November 7

Brian Bond: Client charged with burglary (with priors). Investigator J. Castro. Trial before Judge Trombino ended November 9. Defendant found not guilty. Prosecutor Rapp.

Daniel Carrion: Client charged with aggravated DUI. Investigator A. Velasquez. Trial before Judge Rogers ended November 10. Defendant found not guilty of aggravated DUI; guilty of lesser offense, suspended license. Prosecutor S. Bartlett.

Thomas Timmer: Client charged with aggravated assault, burglary, and theft (with priors). Investigator C. Yarbrough. Trial before Judge Dougherty ended November 18. Defendant found not guilty of burglary and theft; hung jury on aggravated assault. Prosecutor Tinsley.

November 8

John Brisson: Client charged with armed burglary, kidnapping, armed robbery, and aggravated assault (all dangerous). Trial before Judge Bolton ended November 8 with all charges being dismissed without prejudice. Prosecutor T. Duax.

Peter Claussen: Client charged with aggravated assault (dangerous) against children. Trial before Judge Seidel ended November 10 with a hung jury (6 to 2 in favor of the defense). Prosecutor L. Krabbe.

Jerry Hernandez: Client charged with aggravated assault. Investigator G. Beatty. Trial before Judge Skelly ended November 14. Defendant found guilty. Prosecutor T. McCauley.

Ray Schumacher: Client charged with theft (with prior). Investigators H. Jarrett and D. Moller. Trial before Judge Kaufman ended November 15. Defendant found not guilty. Prosecutor J. Martinez.

Roland Steinle: Client charged with aggravated assault (dangerous). Investigator H. Jarrett. Trial before Judge Jarrett ended November 10. Defendant found guilty of misdemeanor disorderly conduct.

November 9

Daniel Carrion: Client charged with two counts of armed robbery. Trial before Judge Bolton ended on

November 14. Defendant found guilty on both counts (non-dangerous). Prosecutor S. Yares.

Darius Nickerson: Client charged with aggravated assault (dangerous), burglary, and felony flight. Trial before Judge Gerst ended November 15 when defendant pled to felony flight; all other charges and allegations were dismissed. Prosecutor R. Wakefield.

November 14

Marie Farney: Client charged with theft (with priors). Investigator C. Yarbrough. Trial before Judge Silverman ended November 16. Defendant found guilty. Prosecutor Wendell.

Louise Stark: Client charged with child molestation and eight counts of sexual conduct with a minor. Trial before Judge Howe ended November 21. Defendant found not guilty of five counts of sexual conduct with a minor; guilty of child molestation and three counts of sexual conduct with a minor. Prosecutor Garcia.

November 15

Cecil Ash: Client charged with possession of dangerous drugs for sale and misconduct involving a weapon. Investigator G. Beatty. Trial before Judge Skelly ended November 28. Defendant found guilty. Prosecutor J. Hicks.

Slade Lawson: Client charged with aggravated assault. Investigator V. Dew. Trial before Judge Kaufman ended November 17. Defendant found guilty. Prosecutor G. McKay.

November 16


James Cleary: Client charged with failure to register as a sex offender (with prior). Trial before Judge Schafer ended November 17 with a judgment of acquittal. Prosecutor Wolfson.

November 21

Vicki Lopez: Client charged with escape. Trial before Judge Topf ended November 23. Defendant found not guilty. Prosecutor Walecki.

November 28

Marie Farney: Client charged with theft. Investigator W. Woodriffe. Trial before Judge DeLeon ended November 28. Defendant found not guilty. Prosecutor Wakefield.

(cont. on pg. 11) 

Rebecca Potter: Client charged with aggravated assault (dangerous). Investigator B. Abernethy. Trial before Judge Wilkinson ended December 1. Defendant found guilty.

Ray Schumacher: Client charged with burglary. Bench trial before Judge Kaufman ended November 28. Defendant found guilty. Prosecutor C. Smyer.

November 29

Peter Claussen: Client charged with four counts of child molestation. Trial before Judge D'Angelo ended December 15. Defendant found guilty. Prosecutor J. Garcia.

Joseph Stazzone: Client charged with two counts of aggravated assault and one count of kidnapping. Trial before Judge Schwartz ended November 30. Defendant found not guilty of kidnapping and guilty of aggravated assaults. Prosecutor D. Patton.

November 30

Nancy Johnson: Client charged with shoplifting (with priors). Trial before Judge Brown ended December 1. Defendant found guilty. Prosecutor M. Daiza. Ω

... This is the time set for Not Guilty Arraignment. State is represented by above-named counsel. Defendant is not present but is represented by above-named counsel. . .

Based upon oral motion of the County Attorney, good cause appearing, specifically that the County Attorney has confirmed that the Defendant has died,

IT IS ORDERED dismissing this matter without prejudice.

[Editor's Note: We've heard of resurrecting old cases, but this seems overly zealous.]

~ ~ ~ ~ ~

One of our attorneys recently spoke to a group of students (grades 4-6) about being a public defender. An assistant attorney general later spoke about being a prosecutor. Our attorney received the following letter from one of the pupils:

Dear Mr. —,
You had the best career. I might be a lawyer when I grow up. The lawyer is the good guy and the prosecutor [sic] is the bad guy. I like the good guy.

[Out of the mouths of babes]

~ ~ ~ ~ ~

In one case where the defendant was representing himself (and our office was serving as advisory counsel), the defendant sent copies of his motion to all parties using the following format:

I hereby certify that the foregoing motion was served upon the state by nailing [sic] a copy thereof to Deputy County Attorney [X] this ____ day of ____, 1994


[OOO—that musta hurt!]

~ ~ ~ ~ ~

One of our clients, who was scheduled for sentencing, decided to write a letter to the judge to explain his circumstances and to plead for leniency. He typed the letter with care to be sure it was just right. The letter was quite well done, according to the judge, except for the one typographical error: he had addressed the envelope to

"The Horrible Judge B. Michael Dann."

~ ~ ~ ~ ~

(cont. on pg. 12) 

Res Ipsa Loquitur (The Thing Speaks for Itself)

The defense of criminal cases is serious business. However, there is no escaping the fact that it generates ironic and humorous anecdotes that are hard to ignore. Meaning no disrespect for anyone involved, this column is presented to share some of the lighter, or weirder, moments of life in the meat grinder we call criminal defense.

This fall, one of our deputy public defenders was informed that a client had died after being released from custody following his preliminary hearing. The court issued the following order:

And last but not least, the following is a letter that our office received in November:

Dear Mr. _____,

I am writing in regards to my case, armed robbery, CR-94-_____. My case was assigned to the Public Defenders Office. On September 2nd I got a letter from [Mr. X], stating that the Public Defenders Office had withdrawn from my case due to a case-load reduction policy, and that he had been appointed to represent me in their stead.

On September 16th, I received from Mr. [X]'s secretary a formal plea offer from the deputy county attorney. It was to plead guilty to armed robbery with 1 prior to at least the presumptive, 9.25 years. I wrote Mr. [X] and told him that I was not interested in the plea offer, and told him some points I had in mind about my defense.

On the week of October 17th, I called Mr. [X] and he said he hadn't had ten minutes to look at my case yet, which he had for a month and a half. At the same time I enquired, for another inmate in the jail here about retaining a good attorney. Mr. [X] was here the next day to visit him, asking for a \$20,000.00 retainer.

On October 25th, I got another letter from Mr. [X], again stating the plea offer. He is clearly negligent in my case and I don't feel at all comfortable having him represent me. Please advise me, what can I do to get my case back to the Public Defenders Office?

Thank you for your time.

Sincerely,

[X X]

[It had to happen someday.]

Editor's Note: If you have had an "interesting" experience in your practice or have heard of such an incident in our office that you would like to share, please submit it to Georgia Bohm, Training Division, for publication in our newsletter.

Bulletin Board

Personnel Profiles

New Staff:

Dan Beever returned to our office and to his position as an Investigator in our Trial Group A on November 04.

Angela Fairchild started employment with our office as an Initial Services Specialist on November 07. Ms. Fairchild has worked as an American Institute intern in that position since June of this year so she will be a familiar face to many of us.

Armida Herrera began as a Legal Secretary in our Trial Group D on November 28. Ms. Herrera, who is bilingual, spent the past four years as an employee of the Bloomington, Illinois Public Defender's Office.

Rosa Leos started as a Clerical Trainee in our Records Division on December 05.

Staff "Moves/Changes":

Helen Brewer, a Legal Secretary in Trial Group A, retired on November 16.

Hal Brown, an Investigator for Group A, retired on November 04.

Heather Cusanek, the Training Secretary, resigned on November 04.

Cynthia Dobbs, a Legal Secretary in Group D, resigned on November 11.

Alice Flores, a Legal Secretary in Trial Group D, resigned on October 21.

Sheryl Lossing, a Legal Secretary in Appeals, will move to Trial Group D on January 03.

Jo Ann Luksich, a Legal Secretary in Trial Group C who had been studying to be a court reporter, resigned effective January 01.

Naomi Manasco, a Legal Secretary in our Juvenile Division--Durango, will transfer to Trial Group D on January 03.

(cont. on pg. 13) 

Sherry Pape, a Legal Secretary in Trial Group D, has accepted the Training Secretary position with our Training Division. She started the new position on December 19.

Maria Rodriguez in our Downtown Records will transfer to our Durango Division on January 3.

William Woodruffe, an Investigator for Trial Group A, retires on December 31.

Speakers Bureau

Jim Haas, Trial Group Supervisor for Group A, is a new member of our Speakers Bureau. He has agreed to address superior court staff on an Overview of the Public Defender's Office as part of superior court's first training quarter.

Amanda McGee, Margaret Morse, David Smith, and Susan White, attorneys in our Juvenile Division, recently have served as guest lecturers at Scottsdale Community College. They have spoken on juvenile issues to the Juvenile Justice Class taught by former prosecutor Melanie Barsikow. Ω

William J. Helme

It is with deep sadness and regret that we inform you of the death of our friend and colleague, Bill Helme.

Bill joined the Public Defender's Office in 1987 and spent the past 4½ years in the Juvenile Division at Durango. Our thoughts and prayers are with his parents and daughter, Jennifer.

We will compile a book of memories for Jennifer. Anyone who would like to participate and share some special thoughts please contact Helene Abrams at 506-4261.

"Juicy" Voir Dire

The following sample is taken from the "COMPLETE LIST OF QUESTIONS FOR POTENTIAL SIMPSON JURORS," a 75-page questionnaire filled out by prospective jurors in the O.J. Simpson double murder case:

[Editor's note: This is verbatim text.]

On average, how often have you talked with relatives or friends about this case? 5 to 10 times a day? 1 to 5 times a day? Once every other day or so? A couple of times a week? Once a week? Once a month? Almost never? Never?

Did you see O.J. Simpson play football in college or as a professional football player? Yes? No? If yes, describe the circumstances and your feelings toward O.J. Simpson as a football player:

Have you seen O.J. Simpson on television as a football commentator? Yes? No? If yes, describe your feelings about O.J. Simpson based upon your observations of him as a commentator:

Have you seen O.J. Simpson as he appeared in movies such as Roots or Naked Gun 1 1/2? Yes? No? If yes, describe your feelings toward O.J. Simpson based upon your observations of him as an actor:

Have you ever asked a celebrity for an autograph? Yes? No? If yes, whom did you ask:

Please name the person for whom you are a great fan and describe why you are a fan of that person?

Have you had a good or positive experience with any coroner's agency, including the Los Angeles Coroner's Office? Yes? No?

Do you watch any of the early evening "tabloid news" programs? such as "Hard Copy," "Current Affair," "American Journal," etc. Yes? No? If yes, how often? (please check)
Daily? Occasionally?

What accomplishments in your life are you most proud of?

Are you a fan of the USC Trojans football team? Yes? No? If yes, for how many years?

Please name the three public figures you admire most.

Ω

